

Tax Bulletin

Missouri Department of Revenue

Volume 10, No. 1

Spring 2001

Directly Speaking . . .



Since 1998, the department has focused on running government more like a business, managing for results by becoming more customer-oriented, and simplifying processes for our customers. As part of our simplification efforts, we have been working to simplify tax rules and regulations, which I hope has helped make your job easier. To date, 118 sales tax rules have been rescinded and 33 new sales tax rules have been proposed to ensure simplicity and consistency. We plan to begin working on income tax rules and regulations, both personal and corporate, in the very near future.

Tax season is going smoothly at the department, mainly in part due to the improvement efforts that we have implemented in the last few years. We are excited to see an increase in the number of taxpayers using WEBFile, the department's web filing application, and also using other electronic filing options.

In February, Governor Bob Holden presented the Missouri Department of Revenue with the Missouri Quality Award (MQA), making us the first state department to be chosen for this honor. The MQA, modeled after the prestigious Malcolm Baldrige National Quality Award, recognizes organizations for outstanding practices and results in customer satisfaction, quality, employee involvement, and leadership.



As part of the MQA application process, we received a feedback report from examiners who visited the department in October. This report identified areas in the department that need to be improved and will serve as our guide in the coming months. If you have any suggestions about how the department could better meet your needs, please do not hesitate to contact me.

I am very proud of what the department has been able to achieve in the last three years. I believe in our simplification efforts and want to continue to simplify our operations to better meet the needs of our customers. We have certainly made great progress in improving quality, as is evident by being chosen for the Missouri Quality Award, but I know we are not finished with our improvement efforts. **We may have won, but we are not done!**

Sincerely,

Carol Russell Fischer

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New Look — New Functionality

by Kay Dinolfo, Director, Electronic Communication, (573) 751-3100

The department's website took on a new look for the new year, with a design focused on functionality and customer needs. The redesign took several months to complete, and was phased in at the beginning of 2001.

Tax professionals will find a web page designed just for them, with links to the more technical information and forms that they need all year long, but particularly during the busy filing season. A new feature that will certainly make your searches easier is an improved interface for DOR letter rulings and tax case summaries. You'll find a new search feature to give you much quicker access to DOR case summaries and redacted letter rulings.

Individual taxpayers also have their own website, called Personal Tax, in keeping with the recent reorganization of the Division of Taxation and Collection into functional areas. Under Personal Tax, you can find all types of individual income tax forms. A brand new feature helps "paper" filers locate the proper form they need for their tax situations. And, of course, a new and improved WEBFile program debuted in January. More details about this revolutionary program appear elsewhere in this issue (see page 4).

Business owners, as well as their tax professionals, will find business-oriented links on the new Business Tax page. This includes forms, informational bulletins, news items, special due dates and other items of special interest to these taxpayers. New business owners have their own section of the page, so they can locate all the various links they will need in order to open and properly register their enterprises.

We have also developed an extensive "Related Links" page, where you'll find quick access to federal sites and forms and other state sites, such as *Missouri Statutes* and the *Code of State Regulations*. Although the DOR cannot

guarantee the accuracy of these sites, as it does not administer or update them, we have found that our customers often need these outside resources in the process of preparing taxes or researching certain situations. We provide the links on a single page in an effort to make these tasks easier and faster.

All these new pages, plus additional information about the department and its motor vehicle and driver licensing functions, are available via the DOR's home page (URL — <http://dor.state.mo.us>). Surf over some day soon. We're sure you'll enjoy the new function-



ality. And if you have any suggestions for improvement, or need to report issues with the site, please feel free to contact us at dormail@mail.dor.state.mo.us

See you on the Web!



Missouri Department of Revenue

Bob Holden Governor; **Carol Russell Fischer**, Director of Revenue; **Stan Farmer**, Acting Director, Division of Taxation and Collection

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2D Barcode 2000

by Mitzi Crump (573) 751-6787 and Mike Davis (573) 751-8913

The department is currently in its second year using the 2D barcode technology. During the 1999 income tax season, more than 110,000 returns were filed using this method. There were two approved vendors last year (H & R Block and Creative Solutions), and an additional five vendors (Drake Software, Dunphy Software, Research Institute of America, STF Services and Taxworks) have teamed up with the department this year. Through April 19, 2001, approximately 96,069 2D barcode returns have been received, a 72% increase from this time last year.

This technology is exciting for several reasons: it allows the department to process returns more than three times faster than manually keyed returns; the error rate is also lower for 2D barcode returns, because this technology virtually eliminates data entry errors; and more taxpayers are receiving faster refunds.

This is how the barcode looks when printed *correctly*:



This is an example of a barcode that is printed *incorrectly*:



Please remember the following when using 2D barcode returns:

- Mail the 2D barcode return to the correct address. The correct address for 2D barcode returns when requesting a refund (or with no amount due) is PO Box 3222. The correct address for 2D barcode returns with an amount due is PO Box 3370.
- Use the most current version of the software. Vendors often provide new versions of software that can usually be downloaded from their web site or Bulletin Board Service.
- Have the correct fonts downloaded.
- Mail in the original copy of the 2D barcode return. Copies of 2D barcode returns are often unreadable by the barcode scanners.
- Do not write in changes on a 2D barcode return. Changes should be made on the return using the software, and a new 2D barcode should be printed.
- If filing a PTC (Property Tax Credit) form and a Form MO-1040 and claiming a Pharmaceutical Tax Credit, the credit must be taken on the Form MO-1040.
- Do not place the mailing label over the barcode.

For more information on 2D barcode, access <http://dor.state.mo.us/tax/vendors/barcodes.pdf> or email Mitzi_Crump@mail.dor.state.mo.us.

Customer Expectations

by Randy Sullens, (573) 751-3958

The department's leadership roles are to continuously improve the system to satisfy customers, employees, and the organization.

The Income Tax Walk-in Team was developed to continue to improve customer satisfaction by examining customer expectations regarding Missouri individual income tax return/property tax credit assistance received when visiting one of our eight Tax Assistance Centers. The team has gathered customer feedback by conducting focus groups and phone surveys. The target audience were individuals who had previously visited our office to obtain tax assistance.

Some of the expectations voiced by the department's customers include:

- "I want to feel confident that the Department of Revenue employee assisting me will prepare the return correctly"
- "I will not have to wait in line more than 15 minutes to obtain assistance"
- "The Department of Revenue employee who pre-

pares my return should thoroughly explain to me, in understandable terms, the details and end result of my return"

- "I need to know what I need to bring along beforehand, instead of waiting in line only to find out I need additional supporting documents to obtain your assistance"

The team is currently preparing its recommendations and strategies on how to implement and/or address the issues voiced by the department's customers. The outcomes of these recommendations will be published in a later edition of the Tax Bulletin.



Taxpayer Education Group Update

by Jack Wright, (573) 522-8602

As noted in a prior *Tax Bulletin*, the department recently established a new Taxpayer Education Group. One of the main goals of this new group is to proactively address tax issues and problems affecting various taxpayers and industries. The group plans to work with industry associations and similar organizations to ensure consistency on tax issues. A letter explaining the formation of this group and its goals was recently sent to approximately 200 Missouri industry associations. After receiving feedback from these associations, a follow-up letter was sent seeking input on ways to disseminate information to association members. The group has also been involved in identifying recent audit, refund, and tax issues, which are impacting or affecting taxpayers and state tax revenues. A basic consumer's use tax information letter was also developed and sent to the associations for distribution to their members. The group has received several requests for additional information from various taxpayers and associations and has acted upon these requests.

The Taxpayer Education Group is currently working on the following projects:

- Analyzing audit summary and refund information to identify industry trends of overpayments
- Working with associations, that have requested seminars
- Creating industry guidelines
- Encouraging feedback from associations regarding educational needs
- Researching other states' education and support efforts
- Participating in the team that oversees the development and revision of sales and use tax regulations
- Participating in charter teams to improve the department's key products
- Various supporting roles related to taxpayer education throughout the department

The group welcomes your input on taxpayer education. If you have any questions, suggestions or comments, regarding the Taxpayer Education Group, please contact Jack Wright by email at Jack_Wright@mail.dor.state.mo.us or at 573-522-8602.

Individual Income Tax Web Filing Update

by James Foster, (573) 751-7791

The department deployed the individual income tax WEBFile application in mid-January. The target audience for this application is a simple return where the taxpayer either has already filed a federal return or chooses not to file the federal return electronically. Through April 20, 2001, over 5,235 tax returns have been filed. WEBFile may be accessed directly at <http://dor.state.mo.us/tax/webfile> or from the department's Internet site.

Along with the conveniences and security of online tax filing, an individual may use his or her credit card to pay online. Upon completion of the tax return, the customer is given a choice to pay by credit card. If he or she chooses to pay with a credit card, the system transfers him or her to a third party vendor to process the transaction. The vendor accepts MasterCard, Discover and American Express.

Perhaps the best endorsement of WEBFile is

what our customers tell us:

"This was excellent! Simple, great help sites and interaction!"

"I think this program is great."

"I just filed my return online and I must say that it was easy, quite helpful and refreshing to see the government taking advantage of the Internet to streamline tax filing system and maximizing efficiency. Keep up the good work."

"Great job on the efile system! It was fast, simple and FREE!! Finally, a good use of our tax dollars!"

While it is difficult to predict what technological changes will shape the future, the department is committed to identifying products and services that meet our customers needs. We will continue adding functionality to the WEBFile application as usage expands. Next year, we plan to support itemized deductions and the apportioning of income between spouses on combined returns in the WEBFile application.

Free Business Tax Training Seminars

by Randy Sullens, (573) 751-3958

The Missouri Department of Revenue offers free business tax training seminars to familiarize new businesses with tax-related issues. The seminars cover sales tax, withholding tax, and business tax registration. Listed below are upcoming seminars:

CAPE GIRARDEAU AREA

June 13, 2001

1:00 p.m. to 3:00 p.m.

Cape Girardeau Tax Assistance Center
3102 Blattner Drive, Suite 102
Cape Girardeau, MO 63702-0909
Phone: (573) 290-5850

COLUMBIA AREA

May 10 & July 9, 2001

9:30 a.m. to 11:30 a.m.

Columbia Tax Assistance Center
1500 Vandiver Drive, Room 113
Columbia, MO 65202
Phone: (573) 884-3814

JEFFERSON CITY AREA

April 25, May 9 & June 13, 2001

10:00 a.m. to 12:00 p.m.

Jefferson City Tax Assistance Center
2018 William Street
Jefferson City, MO 65105
Phone: (573) 751-7191

JOPLIN AREA

May 8 & July 10, 2001

9:00 a.m. to 11:00 a.m.

Joplin Tax Assistance Center
1110 East Seventh Street, Suite 400
Joplin, MO 64801-2286
Phone: (417) 629-3070

KANSAS CITY AREA

May 11 & August 17, 2001

2:00 p.m. to 4:00 p.m.

Kansas City Tax Assistance Center
615 East 13th Street, Room 127
Kansas City, MO 64106-4039
Phone: (816) 889-2944

ST. JOSEPH AREA

August 29, 2001

1:00 p.m. to 3:00 p.m.

St. Joseph Tax Assistance Center
525 Jules, Room 314
St. Joseph, MO 64501-1900
Phone: (816) 387-2230

ST. LOUIS AREA

May 9, August 8 & October 10, 2001

2:00 p.m. to 4:00 p.m.

St. Louis Tax Assistance Center
2510 South Brentwood, Suite 300
Brentwood, MO 63144-2391
Phone: (314) 301-1660

SPRINGFIELD AREA

June 8, 2001

2:30 p.m. to 4:30 p.m.

Springfield Tax Assistance Center
149 Park Central Square, Room 313
Springfield, MO 65806-1386
Phone: (417) 895-6474



Please contact one of the Tax Assistance Centers at the phone numbers listed above if you plan to attend a seminar.

REV'N U Leadership Development Program: *Learn while you work*

by Kay Friedinger, (573) 751-0225

Managers and supervisors are expected to do wondrous things using yesterday's tools and skills. Sound all too familiar? To equip the department's managers and supervisors with the necessary skills to be a leader in today's work environment, the department launched the Leadership Development Program (LDP) in August 2000.

The program is based on the following principles that guide many of today's leaders:

- all work is a system;
- customer satisfaction is our primary objective;
- employees want to do the best job they can;
- you cannot improve if you don't learn; and
- work takes up to 50% of our waking hours, so it should be fun.

The curriculum for the program is a monthly series of two-day learn-and-do workshops. The first set of workshops focus-

es on developing product/process knowledge and skills including system thinking, process management, problem solving, and project manage-



ment. Participants also learn communication and team facilitation skills, as well as the customer-centered culture model used with Performance Excellence Teams at the department. Participants apply the knowledge and skills they learn by selecting a project in their areas to work on throughout

the program. Performance competencies are the focus of the second set of workshops, which center on effective employee performance management, including dealing with marginal performers and personal career development.

Graduates of the leadership development program will be knowledgeable and skilled in both process management and people management. From the process management point of view, these managers and supervisors will have the competencies to lead their work units in improving operations and increasing customer satisfaction. From the people management point of view, they will be able to create an environment where employees are motivated to do their best.

LDP Philosophy: The role of leaders in the department is to continuously improve the system to satisfy customers, employees, and the organization.

New Director Sworn in at Department of Revenue

Carol Russell Fischer was sworn in February 13, 2001, as Director of the Missouri Department of Revenue. Ms. Fischer replaces Quentin Wilson who assumed the position of Cabinet Director in Governor Bob Holden's office.

Ms. Fischer, a certified public accountant, brings a wealth

of knowledge and departmental experience to the position. Prior to this appointment, Ms. Fischer served as Director of the Division of Taxation and Collection for nearly three years, Deputy Director of the Division of Motor Vehicle and Drivers Licensing for two years, and Administrator of the Motor Vehicle Bureau. Prior to her

service with the Department of Revenue, Ms. Fischer was in public accounting and served as the director of accounting for a local hospital.

"I am very excited about my new position," said Ms. Fischer, "and look forward to leading the department as we continue our quality improvement and customer satisfaction efforts."

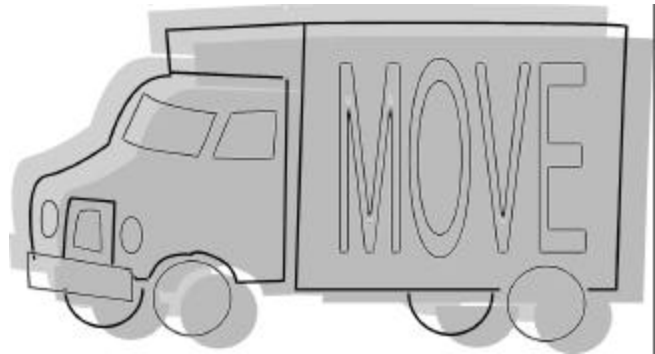
Jefferson City Field Audit/Tax Assistance Center Moving July 1, 2001

by Scott Leary and Debbie Niederhelm (573) 751-8374

The Missouri Department of Revenue's Jefferson City Field Audit Office and Tax Assistance Center currently located at 2018 William Street will be moving to 3237 West Truman Boulevard, Suite 100, on July 1, 2001.

The Tax Assistance Center provides tax assistance for persons seeking help in the area of Missouri Sales/Use Tax, Missouri Employer Withholding Tax, and Missouri Individual Income Tax. The types of assistance provided includes: completing tax returns; issuing Missouri Retail Sales/Use Tax Licenses; performing business registration changes; issuing No Tax Due Statements; collection of taxes; and assisting in resolving tax problems. Office hours are 7:45 a.m. to 4:45 p.m. Monday through Friday. No appointments are necessary. The Tax Assistance Center also conducts periodic seminars to familiarize new businesses with state tax related issues. These seminars are free and listed on the department's website at <http://dor.state.mo.us/tax> and shown on page 5 of this issue.

The Field Audit Office and Jefferson City Tax Assistance Center are one of eight service centers that are located throughout the State of Missouri. A complete list of all the centers including addresses and phone numbers can also be found on the Department of Revenue's website at <http://dor.state.mo.us> or on page 5 of this issue.



Electronic Filing Update

by Jerry Wingate, Tax Program Coordinator, (573) 522-4300



Electronic filing of Missouri income tax returns continues to grow in popularity among Missouri taxpayers. As we approach the April deadline, Missouri is showing a 26% increase in returns compared to this time last year. At the time of this article, over 693,400 returns have been received already! The convenience, accuracy, and speed of electronic filing make it an attractive

alternative to paper. The expansion of the program to include the Forms MO-1040/PTC, as well as more payment options, including credit cards, have also been a big factor in Missouri's growth. Missouri currently ranks 11th in the nation in total returns filed electronically, and fourth in the midwest. Visit the Electronic Filing page on the department's website at <http://dor.state.mo.us/tax> for more information.

COURT CASES

by General Counsel's Office, (573) 751-2633

INCOME TAX

Missouri Merchants and Manufacturers Association v. State of Missouri, Nos. SC83199 and SC83200 (Missouri Supreme Court, en banc, 3/9/01)

This case was filed on behalf of taxpayers seeking additional refunds under the Hancock Amendment (Missouri Constitution, Article X). The taxpayers presented three arguments in their appeal to the Missouri Supreme Court (Court). First, the Taxpayers claimed that the state had incorrectly included the Conservation Sales Tax in the "base year ratio," which is part of the formula used to determine



whether the Hancock Amendment's limitation on taxes has been exceeded. The Court rejected this argument and found that the Conservation Sales Tax was properly included in this calculation.

The second argument presented by the taxpayers concerned the effect of tax credits on the calculation of "Total State Revenue," which is the amount that indicates whether the state has exceeded the revenue cap imposed by the Hancock amendment. The taxpayers' argument focused on the constitution's requirement that Total State

Revenue "shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities." The Court ruled that this language means that tax credits that exceed tax liability and are refunded to a taxpayer should be included in Total State Revenue. The Court remanded the case to the Cole County Circuit Court (Circuit Court) to determine the amount of those credits and to decide whether additional Hancock refunds should be paid as a result of this issue.

The taxpayers' third argument concerned the calculation of their individual Hancock refund checks. These refunds are based on each taxpayer's income tax liability. When a taxpayer reduces his or her liability by claiming tax credits, the refund is reduced. The taxpayers asserted that tax credits are simply another way of paying taxes, and should not reduce their Hancock refunds. The Court disagreed, explaining that Hancock refunds are not available in connection with "taxes not actually paid."

The Circuit Court will now decide whether any additional refunds should be paid as a result of the Court's ruling on the second issue, and the amount of any such refunds.



SALES TAX

Wilson's Total Fitness, Inc., v. Director of Revenue, SC82732 (Mo.banc 3/6/2001).
Wilson's Total Fitness, Inc.,

(Taxpayer) filed a protest payment claiming that its membership dues were not subject to sales tax. Taxpayer offered various activities including weight training, cardiovascular training, racquetball, swimming and tennis facilities. Taxpayer also facilitated competition by organizing basketball, racquetball and volleyball leagues. Taxpayer argued it was not a place of amusement pursuant to the Missouri Supreme Court's (Court) ruling in *Columbia Athletic Club v. Director of Revenue*, 961 S.W.2d 806, 808 (Mo.banc 1998) because its primary purpose was to improve health. The director argued that the Taxpayer's membership dues were subject to tax pursuant to Section 144.020.1(2), RSMo, because Taxpayer held itself out to the public as a place of amusement. The Administrative Hearing Commission (AHC) ruled that the Taxpayer's membership dues were subject to sales tax because the advertisements established that Taxpayer's primary purpose was to provide recreation.

On appeal the Court affirmed the AHC's decision. Furthermore, the Court overruled the "primary purpose" test set out in *Columbia Athletic Club* and reinstated the "*de minimus*" test pre-



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viously set forth in *Spudich v. Director of Revenue*, 745 S.W.2d 677 (Mo.banc 1988). The *de minimus* test provides that if a business location offers amusement, entertainment or recreation activities that comprise more than a minimal portion of all activities of the business, the business is required to collect and remit sales tax pursuant to Section 144.020.1(2), RSMo.



INCOME TAX

Director of Revenue of Missouri v. CoBank, ACB, No. 99-1792 (United States Supreme Court, 2/20/01).

The Farm Credit Act of 1933 created various lending institutions within the Farm Credit System to meet the specific credit needs of farmers. Among these institutions were banks for cooperatives, one in each of 12 farm credit districts, and a Central Bank for Cooperatives. These banks were designed to make loans to cooperative associations engaged in marketing farm products, purchasing supplies, or furnishing farm services. Now, the Farm Credit System includes banks for cooperatives, production credit associations, farm credit banks, and federal land bank associations. By statute each of these institutions is designated as a "federally chartered instrumentality of the United States."

CoBank, ACB is the successor to all rights and obligations of the National Bank for Cooperatives, which had been formed in 1989 through the consolidation of ten district banks for cooperatives and the Central Bank for Cooperatives. The National Bank for Cooperatives filed Missouri corporate income tax returns for the

years 1991 through 1994 and paid the taxes shown on those returns. In March 1996, CoBank filed amended returns on behalf of the National Bank for Cooperatives, requesting an exemption from all state income taxes and refunds on the taxes paid for 1991 through 1994.

Cobank relied on the doctrine of implied tax immunity that originated in *McCulloch v. Maryland*, 4 Wheat. 316 (1819), and it asserted that the Supremacy Clause of the Constitution accords federal instrumentalities immunity from state taxation unless Congress has expressly waived this immunity. The Missouri Supreme Court (Court) held that banks for cooperatives are exempt from state income taxation because the current version of the Farm Credit Act is silent as to such institutions' immunity from state taxation. The New Mexico Court of Appeals and the Indiana Supreme Court have each reached the opposite conclusion with respect to state taxation of production credit associations. *Certiorari* was granted to resolve this conflict.

Congress did expressly designate banks for cooperatives as "instrumentalities of the United States." The Court has ruled that an instrumentality is entitled to implied tax immunity only when it is so closely connected to the government that the two cannot realistically be viewed as separate entities. The Court did not address the implied immunity questions because Congress has provided that banks for cooperatives are subject to state taxation. The Court concluded nothing in the statute indicates a repeal of the previous express approval of state taxation, and the structure of the Farm Credit Act indicates

by negative implication that banks for cooperatives are not entitled to immunity.

Thus, banks for cooperatives are subject to state taxation. The judgment of the Court was reversed.



SALES TAX

Kansas City Royals Baseball Corporation vs. Director of Revenue, 32 S. W. 3rd 560 (Mo. banc 2000).

The Kansas City Royals Baseball Corporation (Taxpayer) sought a refund of use tax paid on certain promotional items given away at Royals' home games. The promotional items included baseball caps, trading cards, baseball gloves and T-shirts. Fans who pay to attend the games receive the promotional items at no additional charge.

The Missouri Supreme Court (Court) found that Taxpayer covers its expenses, including the cost of promotional items, using money from its general revenue funds, not from a specific fund.



Ticket prices are set with all costs in mind. Ticket prices remain the same throughout the season even though expenses such as the promotional items may vary from game to game.

The director argued that

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Taxpayer was using the promotional items when Taxpayer gave the promotional items to the fans. Taxpayer countered that the price of the promotional items was included in the ticket price; therefore, the promotional items were being resold as part of the ticket price. The Court found that there was a resale. There was a transfer of property; ownership changed hands; and there was consideration paid as part of the ticket price. It doesn't matter that the promotional items are ostensibly given away; the cost of purchasing those items is factored into the price charged for each admission ticket. Taxpayer was entitled to the refund of use tax paid on the promotional items.

The Court further ruled that Taxpayer was not entitled to a refund on Royals' yearbooks sold at the stadium. Taxpayer failed to raise the issue in its claim for refund pursuant to the requirements of Section 144.190.3, RSMo, 1994. Failure to satisfy the statutory refund requirements precludes Taxpayer from obtaining a refund on the yearbooks.



INSURANCE TAX

Fidelity Security Life Insurance Co. v. Director of Revenue and Director of Insurance, No. SC82427 (Mo. Sup. Ct., 12/5/00).

Fidelity Security Life Insurance Company (Taxpayer) disputed the assessment of insurance premium tax for 1996. Taxpayer is a life insurance company with its principal place of business in Kansas City. The insurance premium tax is at a rate of two percent per annum of the premiums that insurance compa-

nies receive from its policyholders. From this premium tax certain deductions and credits are allowed. Insurers may deduct the fees that they pay toward their yearly examination by the Department of Insurance. Taxpayer wanted to carry forward the unused deduction into 1996 of the amount the 1995 deductible fees exceeded the 1995 premium tax. The Missouri Supreme Court (Court) concluded the legislature knows how to provide for a carry-over if such is its intent but did not do so here. Taxpayer was not entitled to carry forward the unused deduction.

Taxpayer also contended it should be allowed to carry forward its unused deduction for assessment fees paid to the Missouri Life and Health Insurance Guaranty Association. Taxpayer argued the statute contained no express limitation. The Court concluded, as with the first point, when the General Assembly intends a carry-over of a deduction, exemption or credit, it includes language to that effect, and no such language is present in Section 376.745.1, RSMo.

Taxpayer's third point challenges the non-deductibility of stop-loss insurance plans. Section 148.390, RSMo, allows insurers to deduct the entire amount of benefit payments actually made. This allows insurers to deduct the benefits they pay on policies providing health insurance benefits to employees from the gross premiums they receive on the same policies. The Court concluded the payment of premiums for stop-loss insurance is deductible.



INCOME TAX

Thomas S. Millot v. Director of Revenue, Case No. 00-1 130 RI (Mo. AHC, 12/6/00).

Thomas S. Millot (Taxpayer) asserted that he timely filed with the director a 1996 return showing an overpayment. No return was filed with the department. Because Taxpayer had not filed a 1996 Missouri return, the director calculated Taxpayer's Missouri tax based upon federal information plus additions to tax and interest. Taxpayer appeared at the Administrative Hearing Commission (AHC) and provided copies of his 1996 Missouri and federal returns and W-2s. The director processed this information and withdrew his assessment of tax, additions and interest. Taxpayer requested a refund of his 1996 overpayment. The director refused because the refund request was beyond the statute of limitations in Section 143.801, RSMo.

The AHC determined that the director first became aware of Taxpayer's 1996 Missouri return when Taxpayer appeared at the 8/10/00 hearing and that if a Taxpayer fails to file a return within two years after the date of payment, a refund claim is barred by Section 143.801, RSMo. Taxpayer's withholding tax was deemed to have been paid on or before 4/15/97. Therefore, Taxpayer was not entitled to a refund.



SALES TAX

North Supply Company v. Director of Revenue, SC82257.

The North Supply Company (Taxpayer) filed a refund applica-

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tion requesting a refund of "local use taxes" paid in accordance with Section 144.748, RSMo, because the Missouri Supreme Court (Court) had declared the taxes unconstitutional in the case of *Associated Industries of Missouri v. Director of Revenue*, 918 S. W. 2d 780 (Mo.Banc 1996). The director had issued a refund of the use taxes but had limited the refund period to two years instead of the three years set forth in Section 144.190, RSMo, did not pay interest on the refunded amount and issued a Final Decision denying the amounts not refunded. The Taxpayer appealed the partial denial to the Missouri Administrative Hearing Commission (AHC).

The director based the denial on the Court decision in the case of *St. Charles County v. Director of Revenue*, 961 S. W. 2d 44 (Mo.banc 1998). In that case the Court had ruled that when Section 144.748, RSMo, was repealed by the legislature, Section 144.190, RSMo, the general sales tax refund provision, was no longer applicable and instead, Section 136.035, RSMo, was applicable to the refund claims. Section 136.035, RSMo, imposed a two-year statute of limitation on refund claims and did not allow for interest to be paid on the refunded amounts. The Taxpayer raised constitutional issues challenging the changing of the statute of limitations. First noting its inability to overrule the Court or to rule on constitutional issues, the AHC agreed that the *St. Charles County* decision set forth the controlling law and found in favor of the director.

The Taxpayer appealed the AHC's decision to the Court again raising a constitutional issue of due process. The Court reversed the AHC's decision stat-

ing that the case of *St. Charles County v. Director of Revenue* did not address the constitutional issue of due process and that due process required that the Taxpayer be given a reasonable time after repeal of the statute (Section 144.748, RSMo) to apply for a refund of the local use taxes.



INCOME TAX

Robert Ludlow v. Director of Revenue, Case No. 00-0730 RI (Mo. AHC, 11/7/00).

The Administrative Hearing Commission (AHC) upheld the director's assessment of \$419 in Missouri income tax, plus interest, for 1998.

Robert Ludlow (Taxpayer) filed a 1998 Missouri income tax return reporting tax of \$1,024, withholding of \$605, estimated payments of \$769 and an overpayment of \$350. The director disallowed the \$769 in estimated payments and computed a deficiency of \$419. The \$769 was an overpayment of Missouri income tax for 1996. It had previously been applied as follows: \$507.77 was applied to the Taxpayer's 1993 Missouri income tax liability and \$261.23 was transferred to the Internal Revenue Service (IRS) as a setoff for the Taxpayer's federal tax liability in response to a notice of levy from the IRS.

The AHC found that the Taxpayer did not make any estimated tax payments for 1998 and was not entitled to a credit for the \$769 overpayment from 1996. That overpayment had already been applied to other debts. The Taxpayer had not appealed the director's final decision concerning his liability for 1993 and the director has authority to credit an

overpayment to a taxpayer's liability from a prior year, Section 143.781.1, RSMo. Further, when the state is in possession of an overpayment upon which levy has been made by the IRS, the state must surrender the overpayment to the IRS and is discharged from any obligation or liability to the taxpayer with respect to the overpayment. 26 USC Section 6332.

The AHC concluded that for 1998, the Taxpayer owed Missouri income tax of \$419, plus interest.



State Holidays

State offices will be closed in observance of the following holidays.

May 8, 2001

Truman Day

May 28, 2001

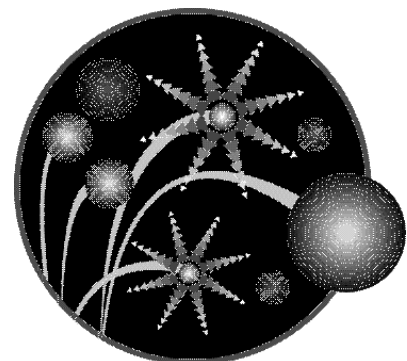
Memorial Day

July 4, 2001

Independence Day

September 3, 2001

Labor Day



Rules Take Effect

by Office of Legislation and Regulations, (573) 751-2110

The Sales and Use Tax Regulation Group (SURG) has made substantial progress in rewriting the sales and use tax regulations. As a result of SURG's work, the following new sales and use tax regulations have been proposed by the department:

12 CSR 10-103.555 — Determining Taxable Gross Receipts. Section 144.021, RSMo, imposes a tax on a seller's gross receipts. This rule provides guidance for reporting gross receipts.

Proposed rule published in the *Code of State Regulations*, effective 02/28/01.

12 CSR 10-103.700 — Packaging and Shipping Materials. Section 144.010.1(10), RSMo, excludes from tax, purchases that are intended to be resold as tangible personal property. Section 144.030.2(2), RSMo, exempts materials that become a component part of new personal property. Section 144.011.1(10), RSMo, excludes from tax certain items of a non-reusable nature purchased by eating or food service establishments. This rule explains when purchases of packaging and shipping materials are not subject to tax.

Proposed rule published in the *Code of State Regulations*, effective 03/30/01.

12 CSR 10-103.800 — Tax Computation. Section 144.020, RSMo, imposes a four-percent sales tax. Section 144.610, RSMo, imposes the state's use tax at the same rate as the sales tax. The *Missouri Constitution*, Article IV, Section 43 (a) imposes a one-eighth of one-percent tax for conservation purposes and Article IV, Section 47(a) imposes a one-tenth of one-percent tax for soil and water conservation and for state parks. Missouri law also provides authority for counties, cities and other political subdivisions to enact local taxes. Sections 144.021, 144.080 and 144.285, RSMo, require sellers to collect the correct amount of tax. This rule explains how to determine the correct rate of tax.

Proposed rule published in the *Code of State Regulations*, effective 02/28/01.

12 CSR 10-110.200 — Ingredient or Component Part Exemption. Section 144.030.2(2), RSMo, exempts from taxation certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

Proposed rule published in the *Code of State Regulations*, effective 03/30/01.

12 CRS 10-103.220 — Resale. This rule interprets the resale exemption in section 144.615.(6),

RSMo, and the resale exclusion in section 144.010.1.(9), RSMo.

Proposed rule published in the *Code of State Regulations*, effective 03/30/01.

12 CSR 10-103.250 — Purchaser's Responsibility for Paying Use Tax. This rule explains when a purchaser is required to pay use tax pursuant to sections 144.610 and 144.655, RSMo.

Proposed rule will be published in the *Code of State Regulations*, effective 05/30/01.

12 CSR 10-101.600 — Successor Liability. Section 144.150, RSMo, makes a person acquiring a business, or the stock of goods or assets of a business, liable for the seller's tax liability. This rule explains how that liability is incurred and what steps must be taken in order for a purchaser to be relieved of this liability.

Proposed rule will be published in the *Code of State Regulations*, effective 05/30/01.

12 CSR 10-103.370 — Manufactured Homes. Sections 144.044 and 700.010, RSMo, create a partial tax exemption for new manufactured homes and an exclusion for qualifying used manufactured homes. This rule interprets the tax law as it applies to the sale of manufactured homes. This rule also identifies charges included as part of the retail sale price of the manufactured home.

Proposed rule published in the 03/01/01 *Missouri Register*, comment period concludes 04/01/01, Order of Rulemaking to follow.

12 CSR 10-110.300 — Common Carriers. Sections 144.030.2(3), (10), (11), (20) and (30), RSMo, exempt from taxation certain materials, parts and equipment used by common carriers. This rule explains what qualifies for the exemptions.

Proposed rule published in the 03/01/01 *Missouri Register*, comment period concludes 04/01/01, Order of Rulemaking to follow.

12 CSR 10-41.010 — Annual Adjusted Rate of Interest. Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2001 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2001.

Emergency amendment — effective 01/01/01, expires 06/29/01.

Proposed amendment will be published in the *Code of State Regulations*, effective 04/30/01.

continued on page 13

SURG has also reviewed the existing regulations to determine which ones can be rescinded in light of the new regulations. Based on these recommendations, the following sales and use tax regulations are being rescinded by the department.

The following proposed rescissions were published in the *Code of State Regulations*, effective 02/28/01:

12 CSR 10-3.131 — Change of State Sales Tax Rate

12 CSR 10-3.210 — Seller Must Charge Correct Rate

12 CSR 10-4.624 — Change of State Use Tax Rate

The following proposed rescissions were published in the *Code of State Regulations*, effective 03/30/01:

12 CSR 10-3.028 — Construction Contractors

12 CSR 10-3.030 — Construction Aggregate

12 CSR 10-3.032 — Fabrication or

Processing of Tangible Personal Property

12 CSR 10-3.102 — Sheet Metal, Iron and Cabinet Works

12 CSR 10-3.212 — Rooms, Meals and

Drinks

12 CSR 10-3.214 — Complimentary Rooms,

Meals and Drinks

12 CSR 10-3.216 — Permanent Resident

Defined

12 CSR 10-3.218 — Students

12 CSR 10-3.220 — Sales of

Accommodations to Exempt Organizations

12 CSR 10-3.472 — General Bond Examples

12 CSR 10-3.474 — Computing a Bond

12 CSR 10-3.476 — Replacing or Applying

for Return of Bond

12 CSR 10-3.478 — Bond Descriptions

12 CSR 10-3.479 — Replacement of Bonds

Issued by Suspended Surety Companies

12 CSR 10-3.842 — Surety Companies —

Remittance Requirements

12 CSR 10-3.844 — Letters of Credit

12 CSR 10-3.878 — Certificate of Deposit

12 CSR 10-3.898 — Non-Reusable and

Reusable Items

12 CSR 10-4.070 — Use Tax License

Necessary

12 CSR 10-4.075 — Sales to Contractors

12 CSR 10-4.632 — Certificate of Deposit —

Use Tax

The following proposed rescissions were published in the *Code of State Regulations*, effective 04/30/01:

12 CSR 10-3.054 — Warehousemen

12 CSR 10-3.058 — Automotive Refinishers and Painters

12 CSR 10-3.062 — Maintenance or Service Contracts Without Parts

12 CSR 10-3.064 — Maintenance or Service Contracts With Parts

12 CSR 10-3.070 — Service-Oriented Industries

12 CSR 10-3.072 — Repair Industries

12 CSR 10-3.074 — Garages, Body and Automotive Shops and Service

12 CSR 10-3.078 — Laundries and Dry Cleaners

12 CSR 10-3.080 — Ceramic Shops

12 CSR 10-3.082 — Furniture Repairers and Upholsterers

12 CSR 10-3.084 — Fur and Garment

Repairers

12 CSR 10-3.090 — Watch and Jewelry

Repairers

12 CSR 10-3.152 — Physicians and Dentists

12 CSR 10-3.154 — Optometrists,

Ophthalmologists and Opticians

12 CSR 10-3.156 — Dental Laboratories

12 CSR 10-3.162 — Pawnbrokers

12 CSR 10-3.186 — Water Haulers

12 CSR 10-3.471 — Type of Bond

12 CSR 10-3.840 — Photographers

12 CSR 10-4.634 — Delivery, Freight and Transportation Charges — Use Tax

12 CSR 10-5.010 — Layaways

The following proposed rescissions will be published in the *Code of State Regulations*, effective 05/30/01:

12 CSR 10-3.167 — Sales of Food and

Beverages to and by Public Carriers

12 CSR 10-3.524 — Bad Debts

12 CSR 10-3.588 — Taxation of Computer Software Programs

12 CSR 10-4.165 — Bad Debts Credit

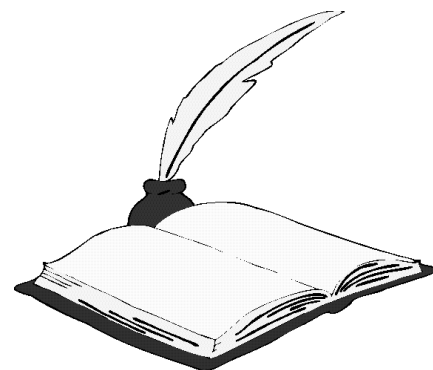
If you would like to receive a copy of any of the rules listed above, please contact the Secretary of State, Administrative Rules Division, P.O. Box 778, Jefferson City, MO 65102.

Letter Rulings

by General Counsel's Office, (573) 751-2633

The following is a list of the letter rulings issued during the period of September 27, 2000 to February 28, 2001.

LETTER #	DESCRIPTION
2120	Manufacturing — Mining Equipment
2076	Steel Manufacturing — Piston Rings (re-issue)
2275	Manufacturing — Photo Finishing Equipment
2328	Food Sales — Supermarket Delis and Salad Bars
2416	Food Supplements and Health Products
2453	Sale of Mailing Lists
2463	Liquor Sales to Exempt Organizations
2472	Repair of Vehicles
2480	Automated Hiring Services
2519	Internet Sales by Electrical Wholesaler
2522	Sales of Wheelchairs and Ambulatory Aids
2523	Subscriptions for Information Delivered by E-mail
2525	Concession Sales — Even Pricing System
2549	Natural Gas Transportation Services
2581	Non-medical Oxygen and Related Production Costs
2585	Manufacturing, Delivering and Installing Signs
2599	Missouri Taxable Income of Non-Resident Individual
2602	Manufacturing — Purchase of Forklifts, Spare Batteries & Battery-Charging Stations
2609	Advertising Services and Products
2610	Steel Manufacturing — Sales of Gases
2620	Video Production Services
2621	Country Club Membership Dues
2625	Cafeteria Sales by Non-Profit Organization
2626	Commemorative Coins
2636	Multi-communication Service Charges
2637	Delivery Charges
2657	Food Sales to Not-for-Profit Organizations
2664	Apportionment of Income — Separate Accounting
2671	Exemption for Computers Purchased by Engineering Firm
2672	Bulldozer for Farm Use
2674	Out-of-State Sales
2675	Aircraft Sold Out of State by Missouri Dealer
2681	Food Supplements
2683	Exemption Certificate from Other States
2685	Digital Subscriber Line and Internet Services
2690	Sawmills Used for Harvesting Timber
2696	Prepaid Phone Cards
2698	Dual Operator
2702	Financial Services Sold Over the Internet
2716	Manufacturing — Gases
2721	Sales/Lease of Equipment Between Single Member Limited Liability Companies and Its Owner
2726	Mutual Funds Services — Franchise and Income Tax Nexus
2727	Trusts — Income Tax
2735	Manufacturing — Acetone
2740	Fitness Center, Membership Dues
2747	Fees for Summer Camp
2748	Manufacturing — Cabinets
2752	Hot Tub — Sales Tax
2763	Out of State Governmental Agencies
2764	Copy Machine Maintenance and Services
2768	Membership Dues — Shooting Club



Copies of the sanitized version of these letter rulings are available at a cost of \$1.10 plus sales tax of 6.225% each by writing to the Department of Revenue, General Counsel's Office, P.O. Box 475, Jefferson City, MO 65105-0475. Copies may also be obtained from the department's Internet web page <http://dor.state.mo.us/tax>.

Coming Soon — DOR Policies Online

The Division of Taxation will be implementing a Taxation Policies Online service to better serve our customers. This service will be posted on the Internet at

<http://dor.state.mo.us/tax> and will contain all policy letters that are issued dealing with tax matters. Please check the web for future updates.

Below is the first policy notice posted on the department's website:

Re: Collection of Sales Tax on Off-Road Utility Vehicles

Effective May 1, 2001, the Department of Revenue will change its policy concerning registration, titling and collection of sales tax on off-road utility vehicles, other than All-Terrain Vehicles (ATVs). Under the new policy, off-road utility vehicles, such as the John Deere Gator, CheTech Groundforce, Club Car Carryall, Howard Price Maverick, Kawasaki Mule, Koyker Raptor, Polaris Ranger and equivalent models by other manufacturers, will no longer be classified as motor vehicles.

There are three consequences to this policy change. First, purchasers of off-road utility vehicles will no longer be required to register and title such off-road utility vehicles with the Division of Motor Vehicle and Drivers Licensing. Second, sellers of these types of vehicles **will be** required to collect and remit sales or use tax on sales of these vehicles beginning on May 1, 2001.

Additionally, these off-road utility vehicles may now qualify for the farm machinery or

equipment exemption. To qualify as farm machinery or equipment the vehicle must be:

a) used exclusively for agricultural purposes; and
b) used on land owned or leased for the purpose of producing farm products; and c) used directly in producing farm products to be sold ultimately in processing form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.

A purchaser who wishes to claim this exemption should complete and sign an exemption certificate (Department of Revenue Form 149), and present the certificate to the seller. Sellers should retain these certificates in their records.

The changes proposed by the Department of Revenue will not affect ATVs. ATVs are specifically required by Missouri law to be registered and titled. Purchasers must pay sales tax on ATVs directly to the Department of Revenue. The law provides that an all-terrain vehicle is "any motorized vehicle manufactured and used exclusively for off-highway use which is fifty inches or less in width, with an unladen dry weight of six hundred pounds or less, traveling on three, four or more low pressure tires, with a seat designed to be straddled by the operator, and handlebars for steering control." These two features distinguish an ATV from an off-road utility vehicle.

If you have questions or comments concerning the taxation of off-road utility vehicles, please send e-mail to salesuse@mail.dor.state.mo.us the department's sales use tax web inquiry.



Tax Calendar

Due Dates for April – July 2001

April

- 2 Motor Fuel Supplier Reports
Motor Fuel Distributor Reports
- 4 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 11 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 16 Estimated Tax Declarations
for Individuals
Estimated Tax Declarations for Calendar
Year Corporations
Form MO-1120 for Calendar Year
Foreign Corporations
Forms MO-1040, MO-1040A,
MO-1040B, MO-1040C, MO-1040P,
MO-PTC, MO-1041, MO-1065,
MO-1120, MO-FT and MO-1120S
Form MO-60 – Extension Request
Cigarette Tax Credit Account & Return
Financial Institutions Tax Return
Other Tobacco Products Monthly Report
Annual Consumer's Use Tax Return
Franchise Tax Returns
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 20 Cigarette Tax Cash Accounts Return
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding Payment
- 30 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
Quarter-Monthly Withholding Payment
Monthly Withholding
Motor Fuel Distributors Reports
Tire Fee Due
Quarterly Insurance Tax Payment

May

- 2 Motor Fuel Supplier Report

- 3 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 10 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 15 Monthly Withholding Return
Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
Form MO-1120/MO-60 for Calendar
Year Trusts (Federal Form 990T)
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 21 Monthly Sales/Use Tax Return
Cigarette Tax Cash Accounts Return
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 31 Motor Fuel/Distributor Report

June

- 1 Quarterly Insurance Tax Payments
- 4 Motor Fuel Supplier Report
- 5 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 12 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 15 Estimated Tax Declarations
for Individuals
Estimated Tax Declarations for
Calendar Year Corporations
Monthly Withholding Return
Cigarette Tax Credit Account and
Return

- Other Tobacco Products Monthly
Report
- 20 Monthly Sales/Use Tax Return
Cigarette Tax Cash Account
Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 27 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment

July

- 2 Motor Fuel/Distributor Report
Motor Fuel Supplier Report
- 5 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 11 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 16 Cigarette Tax Credit Account and
Return
Other Tobacco Products Monthly
Report
- 18 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 20 Cigarette Tax Cash Account Return
- 25 Quarter-Monthly Sales Tax
Quarter-Monthly Withholding
Payment
- 30 Quarterly Insurance Tax Payments Due
- 31 Monthly Sales/Use Tax Returns
Quarterly Sales/Use Tax Returns
Quarterly Withholding Returns
Monthly Withholding Returns
Motor Fuel/Distributor Reports
Tire Fee

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Jefferson City, MO 65105-0629